Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	
Protection and Competition Act	)	MM Docket No. 92-266
of 1992	)	
	)	
Rate Regulation	)	

GTE COMMENTS

GTE Service Corporation, on behalf of the GTE Domestic Telephone Operating Companies ("GTOCs") and GTE Laboratories Incorporated (collectively "GTE"), respectfully submits comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM").[1]

I. GTE URGES THE COMMISSION TO ADOPT A SIMPLIFIED, UNIFORM POLICY FOR REGULATING CABLE SERVICES THAT RECOGNIZES THE RELATIONSHIP OF THE TELECOMMUNICATIONS AND VIDEO INDUSTRIES.

Regulation is rarely imposed by legislative bodies if the competitive market is in full operation. Passage of the 1992 Cable Act[2] is no exception. Congress found that "[w]ithout the presence of another multichannel video programming

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1 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, Notice of Proposed Rulemaking, MM Docket No. 92-266 (Released December 24, 1992).

2 Cable Television Consumer Protection and Competition Act of 1992, Pub.L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act").

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SUMMARY

GTE supports the Commission's efforts to adopt simplified methods for regulating cable operators. However, GTE urges the Commission to also consider the inevitable merging of the cable and telecommunications industries in its adoption of rules and encourages equitable treatment.

The present cable rates must, in large part, be presumed unreasonable given the congressional findings in the Cable Television Consumer Protection and Competition Act of 1992. Therefore, the Commission must select a method of determining appropriate rates. GTE recommends the Commission use competitive market data to provide a benchmark test of reasonableness for current basic tier and programming rates. Once cable rates meet this initial test, price caps regulation should be used to govern future rate changes for these services. GTE suggests that maximum initial leased access rates also be determined in reference to competitive prices and be controlled by price caps. The particular arrangements for leased access should be determined through negotiation and formalized by contract.

GTE recommends the Commission define geographic area as the local franchise to meet the 1992 Cable Act requirement for averaged rates. Commission adoption of the telecommunications industry model of competitive equipment and installation markets is consistent with the Congressional preference for competition and is in the consumers' best interests. GTE supports the Commission's proposals governing customer information and notifications. GTE recommends use of alternative dispute resolution for resolving complaints.

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distributor, a cable system faces no local competition."[3] The result, Congress determined, is that "the cable television industry has become a dominant nationwide video medium," and, monthly rates for basic cable service have increased by 40 percent since December 29, 1986, almost "3 times as much as the Consumer Price Index since rate deregulation."[4]

To rectify what the Senate Committee on Commerce, Science, and Transportation termed "no certainty that . . . competition to cable operators with market power will appear any time soon,"[5] Congress turned to regulation, including rate regulation. With this explicit direction, the Commission now faces the task of how to regulate to "assure . . . rates for the basic service tier are reasonable, and, . . . [to] identif[y] . . . rates for cable programming services that are unreasonable."[6]

The Commission is presented with an unusual opportunity to formulate a regulatory scheme that avoids most of the pitfalls usually associated with cost of service and dual jurisdictional regulation. The opportunity is very unusual in that the Commission can elect to have a uniform method of regulation applied at both the local and federal level which in itself could minimize many regulatory burdens. However, there are hurdles that must be overcome.

First, the Commission should consider not only how its future rules will affect Cable Television Operators ("Cable Operators"), but also how they will affect telecommunications providers, especially the Local Exchange Carriers (LECs). There can be no doubt that the futures of these two industries are

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3 1992 Cable Act, sec. 2(a).

4 Id.

5 S. Rep. No. 92, 102d Cong., 1st Session 18 (1991) ("S.Rep.").

6 NPRM at paragraph 3.

inexorably intertwined.[7] A major objective of the Commission, therefore, should be to formulate rules that will accommodate the merging of these industries, rather than simply addressing the world as it currently exists. The regulatory principles applied to one industry should be equally applied to the other unless the Commission can justify a policy determination to game the market to the benefit or detriment of one industry.

Second, the Commission is faced with a practical dilemma in establishing reasonable rates. Traditional regulatory methods employed in determining reasonable rates cannot be readily used for the cable industry. Rate of return or cost of service regulation of carriers has been built upon voluminous rules regarding the booking of various revenues, investments and expenses, prescribing depreciation practices,[8] and specifying the division of costs among various

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7 See Appendix A detailing the integration of Cable Operators and Competitive Access Providers (CAPs); see also the Commission's findings in Telephone Company-Cable Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd 5781, 5783, 5788 (1992), the Commission's decision to award Cox Enterprises Inc. a pioneer preference for its personal communications service in Amendment of the Commission's Rules to Establish New Personal Communications Services, Tentative Decision and Memorandum Opinion and Order, 7 FCC Rcd 7794, 7799-7802 (1992), and Statement of Commissioner Barrett at FINSYN Conference in San Francisco on January 26, 1993, Communications Daily, January 27, 1993, p. 4 ("You see a converging now of all the industries' coming together . . . .").

8 The Commission, in Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Notice of Proposed Rulemaking (released December 29, 1992), is trying to reduce unnecessary regulatory burdens and their associated costs by undertaking simplification of its depreciation prescription process. Any reform or process simplification resulting from that Docket would be applicable to the rules being formulated here.

services as well as between jurisdictions.[9] This foundation for cost of service regulation does not exist for Cable Operators.[10]

Most parties involved in the application of these rules recognize the limitations and inefficiencies of traditional cost of service regulation.[11] The Commission asks whether "one of the benchmarking alternatives" will assure reasonable rates without the imposition of the heavy administrative burden and the inefficient incentives inherent in cost of service regulation.[12] GTE believes that the Commission has before it the opportunity to devise a scheme of regulation that will minimize those adverse effects.[13] In particular, GTE supports the application of price caps regulation for both basic and nonbasic cable services. However, before a price caps methodology can be applied, the Commission must establish initial reasonable price levels. In fact, the current prices can be presumed unreasonable because, with few exceptions, cable firms

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9 47 C.F.R. § 32, 36, 64 and 69 (1992).

10 Overall, the allocation rules, cost categories, and cost of service standards proposed in the NPRM appear reasonable to GTE. The Commission has taken a sensible approach, apparently modeling the rules after the ones applicable to common carriers. In particular, GTE recommends the Commission specifically apply 47 C.F.R. § 32.27 and § 64.901 et seq. to Cable Operators and their affiliates. This symmetrical application of rules is appropriate as the industries merge.

11 NPRM at paragraph 58; Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, Report and Order, 4 FCC Rcd 2873, 2889-93 (1989), Second Report and Order, 5 FCC Rcd 6786, 6789-92 (1990) ("Price Caps Second Report and Order"), modified on reconsideration, 6 FCC Rcd 2637 (1991).

12 NPRM at paragraph 33.

13 GTE supports the Commission's proposed methods to meet the statutory requirement to develop and prescribe regulations that reduce small system (1000 or fewer subscribers) administrative burdens and cost of compliance. NPRM at paragraphs 129, 131. As the Commission suggests, a small system should be deemed in compliance with Commission rate regulations until a customer or franchising authority affirmatively demonstrates that a system's rates are too high. However, such streamlined treatment should only be granted to stand-alone systems, those not affiliated with a Multiple System Operator.

have been operating since 1986 without either regulation or competition limiting their significant market power and are no doubt extracting monopoly rents in their current prices.[14]

In Summary: GTE believes that the Commission should establish a benchmark for initial rates for basic tier and cable programming services and adopt price caps for future rate increases. The integration of the cable and telecommunications industries requires the Commission establish rules dealing with transactions between Cable Operators and affiliates, including the allocation of expenses and investment when a Cable Operator provides telecommunication services other than cable service as defined in the Cable Act.[15] This will meet the requirements of the 1992 Cable Act.

II. COMPETITIVE BENCHMARKING SHOULD BE USED TO ESTABLISH INITIAL RATES.

The 1992 Cable Act requires that the Commission's rules ensure reasonable rates with a minimum amount of administrative burden.[16] The Commission identifies two generic approaches for basic tier rate regulation: benchmarking and cost-based.[17] It tentatively concludes that a cost of service alternative should not be selected as the primary mode of rate regulation and proposes to adopt a benchmarking methodology. Benchmarking is believed to achieve reasonable

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14 See H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 2 (1992) ("Conference Report") (finding of "undue market power").

15 47 USCA § 522(6), formerly § 522(5) but redesignated by the 1992 Cable Act. Citations throughout are to the sections as redesignated.

16 1992 Cable Act at sec. 3(a), §§ 623(b)(1), (b)(2)(A), (c)(1)(C).

17 NPRM at paragraph 33. GTE concurs with the Commission's conclusion (NPRM at paragraph 13) that the 1992 Cable Act contemplates there be a single "basic tier" of service subject to local regulation.

rates at lower costs and with less administrative burden. The Commission concludes that cost of service regulatory principles could have a secondary role for Cable Operators seeking to justify the reasonableness of rates not meeting a Commission determined benchmarking standard. The Commission makes the same tentative conclusions regarding regulation of cable programming services.[18]

GTE supports the Commission's tentative conclusion to adopt "a benchmark regulatory alternative" to satisfy the statutory objectives.[19] The Commission identifies five benchmark alternatives: (i) rates charged by systems facing effective competition; (ii) past regulated rates; (iii) average rates of cable systems; (iv) cost of service benchmark; and (v) price caps. GTE recommends that the Commission establish reasonable initial rate levels through a benchmark mechanism.[20] However, GTE recommends that the Commission adopt price caps regulation once initial rates are determined to be reasonable.[21]

A. Competitive Rates. Ideally, the initial price benchmark should be determined by examining prices charged by similarly situated firms that are subject to competition. The 1992 Cable Act defines effective competition as having three separate tests.[22] Under the first test, a cable system is not subject to

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18 NPRM at paragraph 92.

19 NPRM at paragraph 2.

20 Because the establishment of the initial levels may require more time than the 180-day statutory mandate allows, the Commission could issue an accounting order pending final determination of basic rates, thus enabling refunds of amounts in excess of reasonable levels. While not expressly provided for basic rates as it is for cable programming service charges, refund authority may be inferred from the S.Rep. at 75.

21 GTE believes that price caps is mislabeled as a "benchmark". The Commission appears to agree, proposing price caps as a method governing future rate changes, not initial prices. NPRM at paragraph 49. GTE will discuss price caps infra.

22 1992 Cable Act, sec. 3(a), § 623(l)(1).

rate regulation if it has fewer than thirty percent of the households subscribing to its service. Under the second test, if one or more multichannel programming competitors not affiliated with the Cable Operator serves at least 50 percent of the households in the cable franchise area and has more than 15 percent of the subscribing households, rates are not regulated.[23] The third test exempts cable rates from regulation if there is a franchisor-owned system serving at least 50 percent of households. GTE expects that a relatively small number of cable systems will initially meet these criteria.

The Commission has issued a data request requiring a sample of several hundred Cable Operators to respond to a questionnaire regarding rates, facilities, and market conditions.[24] If sufficient data are available in response to the Commission request, GTE believes it is possible to specify an equation to estimate the statistical relationship between price and competition. This coefficient could then be used to adjust prices of Cable Operators not subject to competition. GTE believes that this method would be preferable and recommends the Commission delay selection of the initial benchmark until such an analysis can be made. Since there is some doubt over the ability to establish competitive benchmarks, GTE will also address the merits of the other alternatives.

B. Past Regulated Rates. Past regulated rates (pre-1986) could be used provided adequate information is available to update those prices since deregulation. It is intuitive that significant changes have occurred since adoption

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23 The NPRM (at paragraph 9) asks whether a telephone company offering "video dialtone" service would qualify as a "multichannel video programming distributor?" A LEC providing video dialtone service ordinarily would not make multiple channels of video programming available for purchase, and therefore should not be considered a multiple channel video programming distributor.

24 Implementation of Sections of the Cable Protection and Competition Act of 1992-Rate Regulation, Order, MM Docket No. 92-266, FCC 92-545 (Released December 23, 1992).

of the 1984 Cable Act. Fiber optic technology then in its infancy is now in wide use, while computer technology has undergone a near revolution, allowing smart electronics to be included at very low cost in consumer products. At the same time, compression techniques permit operators to significantly increase the number of channels sent over the same distribution network. As the network capacity has grown, the programming available has also increased. The average cost of serving customers has declined with the tremendous gains in subscribership.[25] All of these changes should affect the productivity of the Cable Operators in a positive manner. Additional productivity gains, i.e., economies of scale, have likely occurred due to consolidations of smaller individual firms into larger firms. Similarly, economies of scope should have been gained from vertical integration. A valid use of prior regulated rates would require adjustment for all these changes as well as changes in general price levels and the quality and quantity of programming. This appears to be a large task, and is not recommended unless other techniques fail.

C. Average Current Rates. In its discussion of the use of average rates of cable systems, the Commission points out that if monopoly profits were indeed earned by the cable industry, such monopoly profits would be incorporated into the average rate.[26] The Commission can hardly avoid a conclusion of monopoly profits, given the findings made by the Congress in the legislative history leading to the 1992 Cable Act. The House Committee on Energy and Commerce found that:

> [R]ate increases imposed by some cable operators are not justified economically and that a minority of cable operators have abused

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25 Conference Report at 2.

26 NPRM at paragraph 47.

their deregulated status and their market power and have unreasonably raised the rates they charge subscribers.[27]

From a pragmatic standpoint, the most appealing approach may be to examine the data on rates currently charged by all Cable Operators and formulate a level of reasonableness above which prices would be mandatorily reduced. If this method is chosen, GTE proposes a two-element rate be derived to determine the initial benchmark level for the basic service tier. The first element would capture a base line price for the delivery of the minimum service permitted under the statute. This could be determined by examining prices for systems that offer the statutory minimum channels up to those with no more than 12 channels. The second element would capture a per channel rate for additional channels included in the basic package which would be computed from the differential of the amount determined above and the current charge for basic tier services with channels in excess of 12. Super-basic or programming tier prices could be established using this same per channel approach. The Commission must determine the appropriate point within the distribution of all rates which, in its judgment, would be reasonable.

GTE believes that another method of determining the amount of monopoly rent reflected in current prices would be to examine goodwill. Goodwill, the price paid in excess of book value, is one measure of the expected future profit streams associated with market power. The Commission could require Cable Operators to reduce current prices by the amount associated with goodwill.

D. Cost of Service Rates. It appears that using cost of service methods, either for all firms or for representative firms, would be difficult and time consuming and may even be of doubtful validity since there is no existing

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27 H.R. Rep. No. 628, 102d Cong., 2d Sess. 33 (1992) ("H.R. Rep.").

standard accounting requirement or cost allocation procedure applied to Cable Operators. Further, GTE would caution the Commission against relying on an inefficient form of regulation.

E. Establishing a Reasonable Rate. With all of the benchmark proposals, a safety mechanism should be included allowing the Cable Operator to file with the proper authority[28] for higher rates on a cost justification basis whenever the Cable Operator wants a determination whether the benchmark initial rate is so low as to be confiscatory.[29] Similarly, the certified franchise authority should be able to require a cost justified filing if there is reason to believe the Commission determined rate level was too high for a particular Cable Operator.

In Summary: GTE supports the Commission's tentative conclusion to establish initial basic tier and cable programming services rates through a benchmark alternative rather than the cost-of-service approach. A benchmark using competitive rates will best meet congressional intent to protect subscribers with a cost-of-service safety mechanism available to both Cable Operators and franchising authorities.

III. BASIC TIER AND CABLE PROGRAMMING SERVICES SHOULD BE REGULATED USING A PRICE CAPS METHODOLOGY.

Once the initial rates have been set at a reasonable level, GTE believes price caps regulation should be used to determine prices on a going forward

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28 GTE believes the Commission's proposed certification process is reasonable and fully satisfies the statutory requirements of the Cable Act.

29 GTE believes franchising authorities and Cable Operators could satisfy this requirement and administer the process with a minimum of administrative burden by requiring cable operators to present annual certification that their cost allocation processes have been reviewed by a Certified Public Accountant and deemed to comply with the Commission's rules (as adopted).

basis. GTE proposes four baskets with a fifth basket to be established if a Cable Operator enters the narrow band voice and data market.[30] The four cable services baskets would be Basic, Programming (Super-basic), Individual Channel or Pay Per View (uncapped), and Miscellaneous including Leased Access. GTE suggests the Commission use the same price index and productivity factor used in LEC price caps.[31] That policy would be consistent with the merging of the two industries. The Commission could allow exogenous changes for those factors clearly outside the control of the Cable Operator and not reflected in the price caps formula.

Additional services introduced by Cable Operators would be treated in the same manner as LEC new services under price caps, that is, priced to cover direct cost plus an allocation of joint and common costs. Restructuring of existing services would require a revenue neutral showing. GTE believes that the basic tier and cable programming service offerings of Cable Operators should be defined as that service provided on the effective date of the statute. Any restructuring of basic tier or cable programming service, e.g., moving channels from basic to super basic or to per channel service, would be subject to the revenue neutral test.[32]

GTE believes that the Commission should eliminate recurring charges for additional cable outlets. The issue here is not cost recovery, but the desire of Cable Operators to price discriminate and capture additional consumer surplus. In fact, today some (probably many) individuals have added outlets without the

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30 If the mode of entry makes the cable operator a common carrier with a local service area, it would be subject to the crossownership rules at 47 U.S.C. §533(b) and 47 C.F.R. §63.54.

31 Price Caps Second Report and Order, 5 FCC Rcd at 6793, 6799.

32 This treatment permits retiering but minimizes any ability to evade regulation or increase customer rates. NPRM at paragraph 127.

knowledge of the Cable Operator. Continuation of this pricing distinction only serves to cause the less technically astute to pay higher charges.

IV. A GEOGRAPHICAL UNIFORM RATE STRUCTURE IS APPROPRIATE IF DEFINED IN RELATION TO THE FRANCHISE.

The 1992 Cable Act requires Cable Operators to "have a rate structure . . . that is uniform throughout the geographical area in which cable service is provided . . . ."[33] The Commission proposes to incorporate this language into its regulations. It tentatively concludes that the statute does not prohibit establishment of reasonable categories of service with separate rates and terms of service or preclude reasonable discrimination in rate levels among different categories of customers provided the rate discrimination is uniform throughout a system's geographical service area. Also, comment is sought on the meaning of the term geographic area as used in this section of the 1992 Cable Act.[34]

The Commission is confronted with the difficult task of allowing Cable Operators adequate pricing flexibility while responding to a statutory mandate to develop a uniform rate structure over some geographic area. Differences in system costs, market structures and customer groups would justify differences in rates and pricing flexibility.[35] The Commission can best balance these issues by defining the requirement for geographic area rate uniformity to mean a franchise area.

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33 1992 Cable Act, sec. 3(a), § 623(d).

34 NPRM at paragraphs 112-114.

35 GTE discusses this position more thoroughly in its Petition for Reconsideration at pages 22-23 filed December 18, 1992 in Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report & Order and Notice of Proposed Rulemaking (released October 19, 1992).

V. GTE MAINTAINS THAT THE COMPETITIVE MODEL FOR INSTALLATION AND PROVISION OF SUBSCRIBER EQUIPMENT AND WIRING, ALONG WITH OPEN CONNECTION RULES, IS IN THE CONSUMERS' BEST INTERESTS.

The 1992 Cable Act directs the Commission to establish standards for setting, on the basis of actual cost, the rate for installation and lease of equipment used by subscribers to receive basic tier service.[36] The Commission tentatively concludes that Congress intended to separate rates for equipment and installation from other basic tier rates.[37] The Commission also concludes that rates for installation should not be bundled with rates for the lease of equipment and that such unbundling could help to establish an environment in which a competitive market for equipment and installation may develop.

Installation must be unbundled into two activities: installation of service (connection to the network)[38] and installation of premises wiring. The installation of service should be regulated under the same price cap scheme discussed supra. Initial prices should be established by a simple direct cost analysis to meet the requirements of the 1992 Cable Act.[39]

GTE advocates application of the LEC competitive model for premises wiring. This treatment would allow development of a competitive market for cable wiring and benefit consumers by driving price to marginal cost.[40] A

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36 1992 Cable Act, sec. 3(a), § 623(b)(3).

37 NPRM at paragraph 63.

38 This activity is analogous to the LECs' service ordering charges.

39 1992 Cable Act,sec. 3(a), § 623(b)(3). GTE supports filing this cost information with the certified local franchising authority.

40 GTE discusses this position more thoroughly in its Reply Comments filed January 15, 1993 in Implementation of the Cable Television Consumer Protection Act of 1992, MM Docket No. 92-260, Notice of Proposed Rulemaking (released November 6, 1992).

competitive market permitting customer purchase of in-home wiring installation through alternative vendors is consistent with removal of the recurring charges for additional outlets.

GTE firmly believes that it is in the best interest of consumers to foster a competitive market for equipment in harmony with the Congressional preference.[41] However, GTE recognizes that the Act directs the Commission to establish standards to ensure rates for installation and lease of equipment used by subscribers do not exceed a cost basis.[42] The Conference Report appears to give the Commission "the authority to choose the best method of accomplishing the goals of this legislation."[43]

The Commission's proposal[44] to require operators to base charges for equipment on direct costs, indirect cost allocations, including reasonable general administrative loadings, and a reasonable profit would satisfy the language of the Act. GTE encourages the Commission to limit the application of this standard to leasing of equipment only. GTE recommends the Commission adopt rules permitting connection of subscriber provided equipment and requiring Cable Operators to give customers information necessary to assure compatibility. GTE recommends that the Commission require all Cable Operators subject to rate regulation to notify current customers of their right to obtain their own equipment and to provide their own in-home wiring. Further, all new customers should be given the same information when service is ordered.

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41 1992 Cable Act, sec. 3(a), § 623(a)(2).

42 Id. sec. 3(a), § 623(b)(3).

43 Conference Report at 63.

44 NPRM at paragraph 66.

VI. GTE BELIEVES THE COMMISSION SHOULD EXERCISE CONSIDERABLE DISCRETION IN THE 1992 CABLE ACT REGARDING LEASED ACCESS.

GTE agrees with the Commission that the 1992 Cable Act amendments to Section 612 apply to all cable systems, whether or not subject to effective competition as defined in the statute. GTE also supports the NPRM's conclusions that billing and collection services are optional, but if offered should be unbundled from program service rates and terms.[45]

A. Maximum reasonable rates should be derived from a marketplace or should be consistent with the methods used to regulate basic and cable programming services.

GTE supports permitting the marketplace to determine the maximum reasonable rates for commercial leased access. The Commission suggests it would not prescribe a price or ratemaking methodology where a competitive market exists.[46] GTE believes this is permissible and consistent with the statute which sets no limits on how the FCC is to determine the maximum reasonable rate.

Use of the market where competition exists would not contravene Congressional intent because the Senate Report[47] speaks of the broad discretion conferred on the agency. The report indicates that the setting of some maximum is required, but the method is not prescribed. Reference to "any existing lease arrangements as indicators" reinforces the FCC's discretion to use the market as

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45 NPRM at paragraph 146.

46 NPRM at paragraph 152.

47 S.Rep.No. 92,102d Cong.,1st Sess. 79.

the standard because existing arrangements would have been made under the highly permissive 1984 Cable Act.[48]

GTE supports deferral to the marketplace for both channel rental and billing and collection wherever there exists even a rudimentary marketplace from which standards for cable leased access could be derived. We believe the market for telephone service billing and collection is a useful guide, even if not exactly like the cable service market.

In the absence of a competitive marketplace for commercial leased access, the Commission should simply insure that the maximum cable channel rate is developed consistently with the methods used to establish basic and cable programming service rates. Few Cable Operators are providing leased access today. As new offerings are made available, such offerings should be treated under price caps subject to a cost showing. If an existing customer believes its present price is unreasonable, that customer may seek relief under the Commission's proposed complaint process.[49]

GTE would advise against making the relationship between basic tier and cable programming services rates and leased-channel rates a pat formula. Such provision was contained in the House version of the 1992 Cable Act,[50] but was removed in favor of the less specific Senate language.[51]

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48 This would be analogous to what the Interstate Commerce Commission (ICC) has done in the motor carrier industry. In *Georgia-Pacific Corporation --Petition for Declaratory Order -- Certain Rates and Practices of Oneida Motor Freight, Inc.*, 9 I.C.C.2d 103 (1992), the ICC announced its policy of applying market-based criteria to determine the reasonableness of motor carrier rates.

49 NPRM at paragraph 105. The Commission should assure that existing customers receive notice from their cable operator that they have a right to complain.

50 H.R., 4850, §15(a), *reprinted in* H.R. Rep. No. 628 at 23; Conference Report at 79.

51 Conference Report at 80.

B. Parties Should Be Free to Negotiate Terms for Leased Access Based on Circumstances Too Various to be Captured in a Single Standard.

Difficult as it may be to arrive at any one method for deriving maximum reasonable leased channel rates, it is even harder to conceive of a uniform standard for locating leased access programs with respect to tier, channel and time. There are too many variations among cable system configurations and schedules, not to mention the diversity of lessees' program content and marketing plans. GTE believes that the Cable Operator and the lessee should be free to negotiate a mutually acceptable arrangement. As a fallback in the event of disagreement, the Cable Operator should be allowed to offer an untiered pay-per-view or pay-per-channel leased access arrangement.[52] If the lessee desires a channel only part-time, it should be given a choice of times on a first-come, first-served basis.[53]

Despite Congress' goal of making leased access a "genuine outlet"[54] for the product of unaffiliated programmers, it did not repeal the statutory prohibition against treating Cable Operators as common carriers, 47 U.S.C.§ 541(c), nor did it change Section 612(d) precluding judicial review of discrimination favoring affiliated programmers.[55] By ordering the FCC to establish only a maximum

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52 If non-addressable systems were to incur physical costs in renting untiered channels, they should be able to recover these in maximum allowable rates.

53 The 1992 Cable Act generally only provides for regulation of basic tier and cable programming services, and differentiates these from "per channel" or "per program" offerings. Leased access programming probably will be offered per channel, per program, or per time slot. Nevertheless, Congress has made an exception by allowing this kind of per-channel programming to be regulated at least to the extent of maximum rates and reasonable terms and conditions.

54 S. Rep. No. 92 at 79.

55 GTE does not suggest that a Cable Operator is not a common carrier when the Cable Operator holds itself out to provide either voice or data telecommunications.

reasonable rate rather than a single mandated rate, Congress left ample room beneath that ceiling for variable treatment. In fact, the Senate Report, explicitly states that "[t]he operator and programmer can bargain for a lower rate."[56] This would permit variations in the treatment of non-affiliates. As to the reasonableness of terms and conditions, Congress did not go so far as to say that failure to give a non-affiliate the same kind of channel assignment as an affiliate would be unreasonable.

VII. GTE SUPPORTS THE NPRM'S PROPOSALS FOR SUPPLYING TIMELY AND ACCURATE INFORMATION TO SUBSCRIBERS.

The NPRM[57] states the Cable Act requires the Commission's regulations regarding basic rates to include procedures for implementation by Cable Operators, for enforcement by franchising authorities, and for expeditious resolution of disputes between Cable Operators and franchising authorities. Regulations must also be established that assure subscribers are informed that basic tier service, as defined by the Act, is available to them and that a Cable Operator notify franchising authorities 30 days in advance of any proposed rate increases for the basic tier.[58] GTE believes the Commission is correct in trying to develop simple and expeditious ways to review Cable Operator basic tier rates. The Commission proposal[59] would seem to balance the needs for timely processing, meaningful review, and a definitive period for resolution. The common carrier tariff procedures referenced as analogous represent such a

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56 S. Rep. 92 at 32.

57 NPRM at paragraph 79.

58 1992 Cable Act, sec. 3(a), §§ 623(b)(5), (6).

59 NPRM at paragraph 80.

model. The Commission tentatively concludes[60] it should require Cable Operators to give initial written notice of basic tier availability to existing subscribers within 90 days or three billing cycles from the effective date of the rules governing cable rates. Additionally, it is proposed that Cable Operators notify subscribers of basic tier service availability in any sales information distributed prior to installation and hook up and at the time of installation. GTE supports this proposal and believes it meets statutory requirements.

VIII. CONGRESS HAS URGED AND AUTHORIZED AGENCIES TO USE ALTERNATIVE DISPUTE RESOLUTION TO EXPEDITE RESOLUTION OF COMPLAINTS.

The Commission is under a statutory mandate to employ Alternative Dispute Resolution (ADR) wherever feasible.[61] It has made a good start of negotiated rulemaking, but the Section 208 complaint trial seems to have had few takers.

The Commission should require mediation, fact-finding or some other appropriate technique, at the local or Commission level,[62] as a prerequisite to the conventional processing of a complaint. The parties would not have to come to agreement and could still have recourse to litigation at the Commission, but they should be forced to give ADR a good-faith effort.

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60 Id. at 89.

61 See *Initial Policy Statement and Order*, 6 FCC.Rcd 5669 (1991); *Administrative Dispute Resolution Act*, Pub. L. No. 552, 101st Cong., 2d Sess. (Nov. 15, 1990); *Negotiated Rulemaking Act*, Pub. L. No. 648, 101st Cong., 2d Sess. (Nov. 29, 1990).

62 Whether to try ADR locally or at the Commission should be the parties' choice, and they should not have to go through it at both levels.

Congress did not declare itself opposed to ADR when it ordered expedited resolution. If it appears that ADR is not resolving disputes faster, then it could be discontinued. Until then, ADR should be given a fair trial.

CONCLUSION

GTE believes that the Commission's adoption of rate regulation of Cable Operators must recognize the merging of the telecommunications and video industries and provide appropriate accounting and affiliate transaction safeguards. Existing cable rates are presumptively unreasonable and should be reduced to reasonable levels by use of a competitive benchmark predicated on the data being provided by Cable Operators. To balance consumer interests without burdening Cable Operators and franchise authorities, the Commission should provide for a cost-of-service alternative if initial rates set by the competitive benchmark are deemed unreasonably high or low. Once the initial rate has been determined, price caps regulation, very similar to that applied to telecommunications carriers, is the appropriate method for determining future changes in cable rates.

Respectfully submitted,

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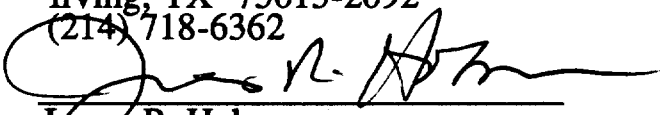

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APPENDIX A

Business Affiliations of Cable Operators and Competitive Access Providers*

Competitive Access Provider	Cable Affiliate	Corporate Relationship	City	Status
Continental Fiber Technologies, Inc. (AlterNet)	Continental Cablevision of Jacksonville	Joint venture with Hyperion Tele-Communications Inc. (sub. of Adelphia Cable)	Jacksonville	Operating 1992
Digital Direct Inc.	Tele-Communications Inc. (TCI)	Subsidiary	Chicago Dallas Seattle-Portland	Operating 4/91 Operating 1991 Operating 1991
FiberNet	Greater Rochester Cablevision (an ATC affiliate)	Subsidiary	Albany Buffalo Rochester Syracuse	Construction Operating 1991 Operating 1991 Construction
FIBRCOM	KBLCOM	Subsidiary	San Antonio Minneapolis Orange County	Operating Construction Construction
GCI FiberNet	WestMarc Communications (a subsidiary of TCI)	Joint venture with General Communications Inc.	Everett Tacoma	Operating 12/90 Operating 12/90
Indiana Digital Access	American Cablevision of Indianapolis	Joint venture with Communications Products Inc.	Indianapolis	Operating 7/88
Jones Lightwave	Jones Intercable	Joint venture with Thurston Group Ltd.	Atlanta Chicago Denver Miami	Operating Operating 3/92 Operating 3/92
Kansas City Fibernet	ATC of Kansas City	Subsidiary	Independence Kansas City	Operating Operating 1988
Data Communications Services	Manhattan Cable	Corporate division	New York	Began early 1980s. Now inactive.
New Channels Corp.	Newhouse Broadcasting	Subsidiary	Syracuse	Operating 1991
Phonoscope Communications Inc.	Phonoscope	Subsidiary	Houston	Operating 1991
Teleport Communications Group	Cox Enterprises, TCI, Comcast and Continental	Joint acquisition (pending)	17 Cities	14 Operational, 3 Planned
Teleport Denver Ltd.	Intertel Communications Ltd. (Canada)	Subsidiary	Denver	Operating 9/90
Teleport Denver Ltd.	Mile Hi Cablevision	Shared rights of way	Denver	Planned
US Fibercom Network	US Cable Corp.	Subsidiary		
Ventura County Cablevision	Western Communications	Subsidiary	Ventura County, CA	Construction

* Compilation does not necessarily include all relationships or recent changes.